

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

NATIONAL LEGAL AND POLICY
CENTER, PETER T. FLAHERTY and
JAMES "JAMIE" R. TOVAR,

Plaintiffs,

vs.

Case No. 8:24-CV-162

BERKSHIRE HATHAWAY, INC.,
WARREN BUFFETT, JOHN DOE 1, and
JOHN DOE 2,

Defendants.

**DECLARATION OF PETER T. FLAHERTY IN SUPPORT OF PLAINTIFFS'
OPPOSITION TO DEFENDANTS' MOTION TO DISMISS**

I, Peter T. Flaherty, being over the age of 18, hereby make the following statements on behalf of myself as a party plaintiff and the National Legal and Policy Center (NLPC) as a co-plaintiff in the above-captioned case in support of the Plaintiffs' Opposition to the Defendants' Motion to Dismiss our complaint.

1. I am a citizen of the United States and a resident of Arlington, VA.
2. I am the Chairman of NLPC, a 501(c)(3) non-profit ethics watchdog group which I co-founded in 1991 and which promotes ethics in public life through research, investigation, education, and legal action. NLPC's website is www.nlpc.org.
3. Plaintiffs are submitting three exhibits in support of their Opposition to Defendants' Motion to Dismiss, which are true and correct copies of correspondence dated May 18, 2023 from Omaha City Prosecutor's Office dismissing my criminal trespassing charge (Exhibit 1); excerpts from the Transcript of the May 2023 Annual Meeting of

Berkshire Hathaway Annual Shareholders (Exhibit 2); and this Declaration (Exhibit 3).

4. Exhibit 1 has been redacted to keep my personal address private.
5. NLPC has two major and robust projects: NLPC's Government Integrity Project (<https://nlpc.org/government-integrity-project/>) and its Corporate Integrity Project (<https://nlpc.org/corporate-integrity-project/>).
6. With respect to NLPC's Corporate Integrity Project, for the last 19 years, I have engaged the CEOs of some of America's largest corporations both at annual shareholder meetings and informally at their offices.
7. In that regard, I have spoken at numerous annual meetings of public companies like Walmart, Alphabet, Goldman Sachs, Facebook, Boeing, PepsiCo, Amazon, GE, Colgate-Palmolive, Pfizer, Proctor & Gamble, United Airlines, Citigroup and Berkshire Hathaway in support of NLPC-sponsored shareholder proposals addressing corporate governance and public policy issues.
8. I have always been treated with courtesy and respect. I have never been silenced or had my mic cut off during any of my scores of presentations at annual shareholder meetings, let alone arrested, as I was during the annual meeting of Berkshire Hathaway on May 6, 2023. It is my understanding that such shocking treatment of a shareholder proponent is unprecedented in the history in the shareholder meetings of public companies in the United States.
9. As alleged in NLPC's Complaint, NLPC submitted a shareholder proposal to Berkshire Hathaway for its May 2023, meeting that was cleared by the Securities and Exchange Commission (SEC). NLPC proposed that the Chairman of Berkshire Hathaway should be independent of the position of Chief Executive Officer, both positions which have been long held by Defendant Warren Buffett. (Filing 1, ¶ 13)

10. NLPC received credentials for both myself and NLPC's Development Director, Plaintiff Jamie Tovar, to not only attend the entire meeting, but also to speak in favor of NLPC's proposal.
11. On May 1, 2023, NLPC received an email from Marc Hamburg, Berkshire's Secretary, Senior Vice President and Chief Financial Officer, with instructions for proposal proponents for the day of the meeting, including where to report to deliver proposal presentations. (Filing 1 ¶ 20). The email stated, "Once you arrive at microphone zone 1, you should ask for either Dan Jaksich or Cathy Woollums." Mr. Hamburg's email also stated, "You will have three minutes to present the proposal. However, we will be somewhat flexible as to time should you run over a minute or so." *Id.* Except for this time limit, there was no limitation on the content of NLPC's remarks in support of our proposal.
12. With this guidance suggesting flexibility on the amount of time I had, I prepared my remarks to last 4 minutes and 10 seconds. Those comments were posted not only on NLPC's website the day before the meeting (<https://nlpc.org/featured-news/berkshire-hathaway-shareholder-to-criticize-warren-buffett-and-bill-gates-for-politicized-philanthropy>) but also on a national wire service.¹
13. I believe that my originally prepared remarks were viewed by Berkshire Hathaway personnel before the meeting on May 6, and thus, Defendants knew ahead of time what I wanted to say at the meeting, including criticizing Mr. Buffett's billions of dollars to

¹ News Direct, "*Berkshire Hathaway Shareholder to Criticize Warren Buffett and Bill Gates for Politicized Philanthropy*" (May 5, 2023), <https://newsdirect.com/news/berkshire-hathaway-shareholder-to-criticize-warren-buffett-and-bill-gates-for-politicized-philanthropy-287015566>

support of the controversial work of the Bill and Melinda Gates Foundation as well as a reference to Bill Gates' controversial association with Jeffrey Epstein. We did not receive any objection to them.

14. With this reliance on Berkshire's representatives that NLPC would be on the agenda and able to speak for at least three minutes in support of our proposal, as well as able to attend the full meeting to hear other shareholder proposals and to vote on them, NLPC paid for the travel expenses of myself and Plaintiff Mr. Tovar to attend the meeting in Omaha, Nebraska.
15. When I arrived at the arena, I was informed for the first time that the three-minute limitation would be strictly enforced, whereupon I revised and shortened my planned remarks to conform to the new limit, contrary to the Defendants' assertion in their Motion to Dismiss that my remarks during the meeting would be over 4 minutes. Filing 21 at 21.
16. Shortly after I began to deliver my revised remarks, I was approached and interrupted at the microphone by Ms. Woollums when I mentioned the Gates' Foundation's controversial promotion of Critical Race Theory teaching that "math is inherently racist," and a Gender Identity Toolbox, "which asserts that gender is a result of socially and culturally constructed ideas." Exhibit 2 at 277: 20-25; 278:1-4. Ms. Woollums told me that I should stay "on topic."
17. I then stated into the microphone, "You are not going to censor what I say, ma'am. I'm very sorry. And I appeal to the Chair (occupied by Mr. Buffett) that I be allowed to continue. Sir?" Exhibit 2 at 278: 5-7.

18. Mr. Buffett stated, “You may continue but under the three-minute limitation.” I respectfully replied, “Of course.” Exhibit 2 at 278: 8-11.
19. As I resumed speaking, I mentioned Bill Gates’ controversial association with convicted sex offender Jeffrey Epstein, an association which had recently been reported in depth in the *Wall Street Journal* and other major publications.²
20. Mr. Buffett started to talk over me and said, “I’ll interrupt you there.” Id. at 278:18-19. Although I could not hear what Mr. Buffett said due to the noise from the lack of decorum from the audience who loudly heckled me, according to the transcript, Mr. Buffett objected to my remarks as “attacks on an individual” (presumably Bill Gates). Id. at 23-24).
21. After that interruption, I resumed talking about the controversial work only of the Gates Foundation and not about any individual (“The Gates Foundation had a huge influence over the COVID response fiasco.” Id. at 20-22). In any event, Mr. Buffett’s personal friendship and philanthropic partnership with Bill Gates was certainly germane to our resolution to separate the roles of CEO and Chairman. It was not a personal attack.
22. The work of the Gates Foundation was a topic which I had been previously talking about in my remarks, and for which Mr. Buffett had given me permission to continue talking about, after he overruled Ms. Woollums’ admonition that I stay “on topic” when I first mentioned the Gates Foundation’s controversial work. Therefore, I reasonably assumed I could continue to finish my remarks about the Gates Foundation.

² See, e.g., Khadeeja Safdar, “Bill Gates, Leon Black, Thomas Pritzker: One Day in the Life of Jeffrey Epstein,” Wall St. J. (May 4, 2023). https://www.wsj.com/business/jeffrey-epstein-calendar-bill-gates-leon-black-thomas-pritzker-62d7590?mod=Searchresults_pos10&page=5

23. Nevertheless, on information and belief, Mr. Buffett and/or one of his agents acting on his or Berkshire's behalf, intentionally ordered that my mic be cut. Although I did not hear him when, according to the transcript, Mr. Buffett said "will somebody remove Mr. Flaherty from the. . . you've crossed the boundary." Exhibit 2, 279:3-6.
24. Yet with respect to the earlier Q&A session of the meeting that was open to any shareholder attendee, Berkshire's Shareholders Guide on "Microphone Manners" (p. 7) makes clear that other than questions regarding Berkshire's investments or politics, there were no "boundaries" since "[a]ny other subjects are fair game." Filing 1, ¶ 27. And even if I had crossed the purported boundary in my passing reference to Bill Gates the individual, I continued with my remarks about the work of the Gates Foundation, a topic which was not beyond the purported limits.
25. I was then approached by one of the two security guards who told me that I was finished or words to that effect, whereupon I said to him. "Well, Mr. Buffett is in the chair and he will rule, not you." That comment was not transcribed on the official transcript in Exhibit 2, presumably because my mic was cut and Mr. Buffett was speaking, but it can be heard and viewed on video made by NLPC's Mr. Tovar.³
26. Mr. Buffett responded to the substance of my comments by acknowledging that political and other contributions from Berkshire companies can indeed have negative reputational impacts but that his contributions to the Gates Foundation were from his personal funds. Exhibit 2, 279-281. In short, Mr. Buffett recognized that my remarks were legitimate since as the alter ego of Berkshire Hathaway as both the Chairman and

³ <https://www.youtube.com/watch?v=RQOx7FAAGbU>

CEO, his private donations to a controversial organization can have a reputational impact on Berkshire the company.

27. Shortly thereafter, a second security guard then approached me and asked that I leave even though my mic was cut and I was no longer speaking while Mr. Buffett was responding to my remarks. See Tovar video. In no way was I disrupting the meeting.
28. I responded to the second security guard that if I were not allowed to finish my comments, I would file a complaint with the SEC, which NLPC eventually did. I did not refuse to leave nor did I hear Mr. Buffett's request that I be removed from the premises.
29. One of the security guards summoned a nearby uniformed Omaha Police Officer and told him to have me arrested. The security guard did not "once more" ask me that I leave in the presence of the officer as required by Omaha Police Department Policy or warn me that if I did not leave, that I would be arrested for trespass. Nor did the security guards tell me that I was free to stay for the rest of the meeting as I was entitled to do but could no longer speak, which I wasn't doing anyway.
30. The officer grabbed and twisted my left arm and pulled me away from where I had been standing and led me out of the hall. I told the officer to stop twisting my arm which was causing me pain and discomfort, whereupon he said that he would twist it more if I did not move along faster or words to that effect.
31. I was not a casual or incidental participant in the meeting. I am a longtime shareholder activist, recognized as such by national business publications and television networks. My ejection and arrest went viral in the media and jeopardized my ability to credibly sponsor proposals on behalf of my organization, and to speak at annual meetings, a

significant part of my personal reputation and public identity, not to mention my career and livelihood.

* * * * *

Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 19, 2024

/s/ 
PETER T. FLAHERTY